

REMARKS

The applicants have studied the Office Action dated August 22, 2003, and have made amendments to the claims. Claims 1-10 have been cancelled; claims 11-20 have been amended; and new claims 21 and 22 have been added. It is submitted that the application, as amended, does not include new matter and is in condition for allowance. Reconsideration and reexamination are respectfully requested.

The Examiner objected to the Abstract of the Disclosure. Applicants have amended the Abstract of the Disclosure in accordance with the Examiner's remarks regarding proper terminology. Marked-up and clean copies of the abstract are enclosed. The substitute clean abstract includes the same changes as indicated in the marked-up copy abstract, showing additions and deletions. It is believed that this amendment does not introduce new matter in the application. Therefore, it is respectfully submitted that the objection to the abstract should be withdrawn.

The Examiner rejected claims 1-10, 13, 15, 17, 19 and 20 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention. Also, claim 12 was considered grammatically incorrect by the Examiner. Claims 1-10 have been cancelled. Claim 12 has been amended to state part, "wherein methanol is used to extract said crude extracts." Claim 13 has been amended to include a period at the end of the claim. Claims 15, 17, 19 and 20 have been amended to delete the term "derivative." Accordingly, it is respectfully submitted that this rejection be withdrawn in light of the aforementioned amendments, which do not include new matter.

Claims 1 and 11 were rejected under 35 U.S.C. § 102(b) as being anticipated by Japanese Publication No. JP62019505A, issued to Seto (hereinafter referred to as "the Seto reference"), Japanese Publication No. JP01332505A, issued to Morita, et al. (hereinafter referred to as "the Morita reference"), Japanese Publication No. JP75003367, assigned to Toraichi Izutsuya (Izuti) (hereinafter referred to as "the Izuti reference"), the article "Screening of Crude Drugs Used in Turkey for Nemotocidal Activity on the Larva of *Toxocara canis*," written by Kiuchi, et al. (hereinafter referred to as "the Kiuchi references"), and the article, "Effects of Chinese Medicine for Helminth (VII) Minimum Lethal Concentration on 3rd Stage Larvae of *Anisakis simplex* with the Natural Compounds, Isolated from Crude Drugs and Several Kinds of Derivatives," written by Suzuki, et al. (hereinafter referred to as "the Suzuki reference").

The Seto reference teaches an insecticide comprising an extract of *Cnidium officinale* and *Cinnamomum cassia*. Both of the Morita and Izuti references teach an insecticide comprising an extract of *Cinnamomum cassia*, whereas the Kiuchi reference teaches a

composition comprising a methanol extract of cinnamon. Finally, the Suzuki reference teaches an insecticide comprising of *Paeonia suffruticosa*.

A proper rejection for anticipation under § 102 requires complete identity of invention. The claimed invention, including each element thereof as recited in the claims, must be disclosed or embodied, either expressly or inherently, in a single reference. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991); Standard Havens Prods., Inc. v. Gencor Indus., Inc., 953 F.2d 1360, 1369, 21 U.S.P.Q.2d 1321, 1328 (Fed. Cir. 1991).

The invention claimed by amended claim 11 is an insecticide comprising crude extracts from *Paeonia suffruticosa*, *Cnidium officinale*, *Cinnamomum cassia*, mustard (*Brassica juncea*) and horseradish (*Cholearia aroracia*). A similar insecticide, including all of the elements recited in amended claim 11, is not disclosed in the Seto, the Morita, the Izuti, the Kiuchi, or the Suzuki references. There is no disclosure of a combination of extracts from the *Paeonia suffruticosa*, *Cnidium officinale*, *Cinnamomum cassia*, mustard (*Brassica juncea*) and horseradish (*Cholearia aroracia*). In the absence of a disclosure of a combination of elements including crude extracts from *P. suffruticosa*, *C. officinale*, *C. cassia*, *B. juncea* and *C. aroracia*, a rejection of amended claim 11 under § 102(b) is improper.

Claims 1 and 11 were also rejected under 35 U.S.C. § 102(a) as being anticipated by Chinese Publication No. CN0254695A, issued to Sun (hereinafter referred to as "the Sun reference"). The Sun reference teaches a biofertilizer comprising an extract of *P. suffruticosa*, which is disclosed as having pesticidal functions. However, similar to the argument with respect to the § 102(b) rejection above, a rejection of amended claim 11 under § 102(a) is improper since the Sun reference does not teach or describe a combination of elements including crude extracts from *P. suffruticosa*, *C. officinale*, *C. cassia*, *B. juncea* and *C. aroracia*.

Claims 1, 3, 11 and 16 were rejected under 35 U.S.C. § 102(b) as being anticipated by Japanese Publication No. JP03123714A, issued to Sugamoto (hereinafter referred to as "the Sugamoto reference"), and the article, "The Illustrated Encyclopedia of Essential Oils: The Complete Guide to the Use of Oils in Aromatherapy and Herbalism," written by Lawless (hereinafter referred to as "the Lawless reference"). Amended claim 11, as discussed above, is patently distinct from the Sugamoto and Lawless references because neither of these cited references disclose or teach a an insecticide comprising crude extracts from *Paeonia suffruticosa*, *Cnidium officinale*, *Cinnamomum cassia*, mustard (*Brassica juncea*) and horseradish (*Cholearia aroracia*). As established above, a rejection under § 102(b) requires complete identity of invention in a single reference. The Sugamoto and Lawless references do not suffice as proper references for anticipating the present invention under § 102. Amended

claim 16, which depends from amended claim 11, is deemed allowable for the reasons cited above with respect to amended claim 11.

Claims 1, 3, 11 and 16 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,436,150, issued to Watanabe, et al. (hereinafter referred to as “the Watanabe reference”). The Watanabe reference teaches a fabric protectant comprising a plant oil such as horseradish or cinnamon oil to control fabric related pests. However, the Watanabe reference does not disclose a combination of extracts from the *Paeonia suffruticosa*, *Cnidium officinale*, *Cinnamomum cassia*, mustard (*Brassica juncea*) and horseradish (*Cholearia aroracia*). Accordingly, amended claim 11, and amended claim 16 which depends therefrom, distinguish over the Watanabe reference.

Claims 1, 3, 11, 16 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Japanese Publication No. JP10251108A, issued to Mochida, et al. (hereinafter referred to as “the Mochida reference”), by Russian Publication No. RU2099946C1, issued to Rusakova (hereinafter referred to as “the Rusakova reference”), and by the article, “Composition of essential oil of *Brassica juncea*,” written by Jiang, et al. (hereinafter referred to as “the Jiang reference”). The invention recited in amended claim 11 is not disclosed in either of these references. Therefore, amended claim 11, and amended dependent claims 16 and 17, overcome the rejection under § 102(b) with respect to these references.

Claims 1, 3, 11, 16 and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by the Lawless reference. As stated above, amended claim 11 distinguishes over the Lawless reference since the Lawless reference fails to describe an insecticide comprising crude extracts from *Paeonia suffruticosa*, *Cnidium officinale*, *Cinnamomum cassia*, mustard (*Brassica juncea*) and horseradish (*Cholearia aroracia*). Since amended claims 16 and 20 depend from amended claim 11, these claims should also be deemed allowable for the reasons cited above with respect to amended claim 11.

Claims 1, 2, 11 and 12 were rejected under 35 U.S.C. § 102(a) as being anticipated by the article, “Insecticidal and fumigant activities of *Cinnamomum cassia* bark-delivered materials against *Mechoris ursulus* (Coleoptera: Attelabidae),” written by Park, et al. (hereinafter referred to as “the Park reference”), and by the article “Plant natural products as insect steroid receptor agonists and antagonists,” written by Dinan, et al. (hereinafter referred to as “the Dinan reference”). Amended claim 11, and amended claim 12 which depends therefrom, distinguish over these cited references since neither the Park nor the Dinan references teach or describe a an insecticide comprising of crude extracts from *Paeonia suffruticosa*, *Cnidium officinale*, *Cinnamomum cassia*, mustard (*Brassica juncea*) and horseradish (*Cholearia aroracia*). Accordingly, this rejection under § 102(a) is improper.

Claims 1, 2, 11 and 12 were rejected under 35 U.S.C. § 102(b) as being anticipated by the article, "Specificities of bio-antimutagens in plant kingdom," written by Ishii, et al. (hereinafter referred to as "the Ishii reference). The Ishii reference teaches a methanol extract of *C. officinale*, but not as an insecticide. The Ishii reference clearly fails to teach or describe the present invention as recited in amended claim 11. Amended claim 12, as stated above, depends from amended claim 11. Therefore, amended claims 11 and 12 overcome the prior art and should be deemed allowable.

Finally, claims 1 and 11 were rejected under 35 U.S.C. § 102(a) as being anticipated by Chinese Publication No. CN1243742A, issued to Gao (hereinafter referred to as "the Gao reference"). The Gao reference teaches an extract of *P. suffruticosa*, wherein the waste residue may be used as an insecticide. The Gao reference fails to teach or describe an insecticide comprising crude extracts from *Paeonia suffruticosa*, *Cnidium officinale*, *Cinnamomum cassia*, mustard (*Brassica juncea*) and horseradish (*Cholearia aroracia*). Accordingly, a rejection under § 102(a) with respect to the Gao reference would be improper in light of the absence of disclosure of the aforementioned combination of elements.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California, telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,
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